

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE
EMPLOYER, d/b/a UPMC
PRESBYTERIAN HOSPITAL AND d/b/a
UPMC SHADYSIDE HOSPITAL

and

SEIU HEALTHCARE PENNSYLVANIA,
CTW, CLC

Cases: 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578
06-CA-115826

**UPMC’S BRIEF IN SUPPORT OF EXCEPTION TO ADMINISTRATIVE
LAW JUDGE MARK CARISSIMI’S SUPPLEMENTAL DECISION**

The General Counsel has alleged that the two Respondents in this matter, UPMC and UPMC Presbyterian Shadyside, are a single employer within the meaning of the National Labor Relations Act (the “Act”). In a Partial Motion to Dismiss, Respondent UPMC requested that the single employer allegations be dismissed and made a proposal to guarantee any remedy ordered by the National Labor Relations Board (the “Board”) in this matter. On July 31, 2015, Administrative Law Judge Mark Carissimi accepted UPMC’s proposal and issued a Supplemental Decision in which he concluded that “it would not effectuate the policies of the Act to continue to litigate the complaint allegation that UPMC and Presbyterian Shadyside

constitute a single employer.” (7/31/2015 Supp. D., at 8:32-35.) Judge Carissimi therefore dismissed the Complaint’s single employer allegations.

Judge Carissimi’s ultimate conclusion that the single employer allegations should be dismissed is supported by Board precedent and the record in this case. UPMC does not except to the ALJ’s findings and conclusions at this time. Instead, UPMC excepts only to the scope of the Supplemental Decision’s recommended order, which purports to bind UPMC’s “officers, agents, successors, and assigns.” (Supp. D., at 8:42-9:1.) This exceeds the parameters of UPMC’s guarantor proposal. UPMC asks that the recommended order be amended to conform to the scope of UPMC’s offer.

STATEMENT OF THE CASE

This case arises out of a longstanding corporate campaign waged by SEIU Healthcare Pennsylvania targeting UPMC, a holding company, and various of its subsidiaries, including UPMC Presbyterian Shadyside. The hearing on the unfair labor practice allegations in this matter was held before ALJ Carissimi beginning on February 12, 2014 and spanning several weeks. Judge Carissimi bifurcated the case, proceeding with a hearing on the unfair labor practice allegations while deferring to a later date the hearing on the single employer allegations. (Hearing Tr. 2783:4-2787:15.) ALJ Carissimi issued a Decision and Order on the unfair labor practice allegations on November 14, 2014. All parties filed exceptions relating to the November 14, 2014 Decision and Order; those exceptions are currently pending before the Board at Case JD-62-14.

Separately, the Regional Director of Region 6 issued a Consolidated Complaint in Case 06-CA-119480, naming as respondents UPMC and UPMC Presbyterian Shadyside, as well as additional respondents not included in the present matter. This Consolidated Complaint also

involved the same Charging Party as in the present matter. As in this matter, the Consolidated Complaint in Case 06-CA-119480 included “single employer” allegations involving UPMC. The single employer allegations in Case 06-CA-119480 were severed from the merits aspects of the case and consolidated with the single employer allegations of this matter. In April 2015, after much negotiation, a settlement agreement was entered into in Case 06-CA-119480, which the Charging Party did not join, in which UPMC agreed to “guarantee” the performance by the other respondents of the remedial terms of the settlement agreement. (UPMC Br. in Support of Motion to Dismiss Ex. G, Case 06-CA-119480 Settlement Agreement.) More specifically, the settlement agreement approved by the Regional Director of Region 6 stated the following:

GUARANTOR – Without admitting that UPMC and its named subsidiaries are a single employer or single integrated enterprise, in the event that any of the Charged Parties fail to fully comply with any applicable terms of the settlement, UPMC agrees to guarantee compliance with the remedies as set forth in this Agreement at all locations listed in the Posting of Notices paragraph above.

(*Id.*) As part of the settlement of Case 06-CA-119480, the case was dismissed in its entirety, including the single employer allegations.

With respect to this matter, on June 4, 2015, UPMC filed a Partial Motion to Dismiss the bifurcated single employer allegations (“Motion”). In support of its request for dismissal, as in Case 06-CA-119480, UPMC offered to “guarantee the performance by Presbyterian Shadyside of any remedial aspects of the Decision and Order which survive the exceptions and appeal process.” (UPMC Br. in Support of Motion to Dismiss, at 5.) The General Counsel and the SEIU filed oppositions to UPMC’s Motion; UPMC filed a reply; and the General Counsel filed a response to UPMC’s reply. At the conclusion of briefing, ALJ Carissimi entered his Supplemental Decision “accept[ing] the proposal of UPMC that it be the guarantor of any

remedy.” (Supp. D., at 8:30-35.) On the basis of this acceptance, ALJ Carissimi dismissed the single employer allegations in the Complaint. (*Id.*)

QUESTION INVOLVED

Should the Supplemental Decision’s recommended order be amended to state only that “The Respondent, UPMC, shall be the guarantor of any remedies that the Board may order in the original decision in this case (JD-62-14)” when there is no factual or legal basis to expand the recommended order to bind UPMC’s “officers, agents, successors, and assigns?”

ARGUMENT

In his Supplemental Decision, ALJ Carissimi repeatedly acknowledged that the at-issue guarantor proposal was made exclusively by UPMC. (*See, e.g.,* Supp. D., 4:5-6.) Nevertheless, ALJ Carissimi expanded the scope of UPMC’s offer, perhaps unintentionally, by recommending an order that would bind, in addition to UPMC, unidentified additional legal entities and individuals actually and/or potentially associated with UPMC.

There was no legal or factual basis to expand the scope of UPMC’s guarantor offer. Indeed, nowhere in UPMC’s Motion or in any supporting briefs did UPMC offer for its “officers, agents, successors, and assigns” to be the guarantor(s) of remedies. (*See generally* UPMC Br.; UPMC Reply Br.) Nor is there any evidence in the record to identify whether such entities exist or to justify their inclusion in a remedial order. Moreover, the General Counsel has tacitly acknowledged that a guarantee by UPMC alone of remedial matters is sufficient to resolve single employer allegations involving UPMC in light of the Regional Director’s acceptance of guarantor language binding UPMC alone in Case 06-CA-119480.

Accordingly, the scope of the recommended order should be amended to identify exclusively Respondent UPMC as the guarantor of any remedy. *See, e.g., Michigan Lumber*

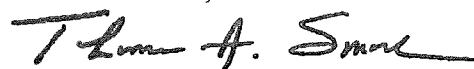
Fabricators, Inc., 111 NLRB 579 (1955) (rejecting legal theory when there was no evidence in support of it).

CONCLUSION

For these reasons, the Supplemental Decision's recommended order should be amended to bind only UPMC as the guarantor of any remedies that the Board may order in Case JD-62-14.

Respectfully submitted this 18th day of September, 2015.

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CERTIFICATE OF SERVICE

On September 18, 2015, a copy of UPMC's Brief in Support of Exception to Administrative Law Judge Mark Carissimi's Supplemental Decision has been served by First Class Mail on the following:

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The same has been served by email on the following:

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